

SERVICE DATE – MARCH 10, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35081 (Sub-No. 2)

CANADIAN PACIFIC RAILWAY COMPANY, ET AL.—CONTROL—DAKOTA
MINNESOTA & EASTERN RAILROAD CORP., ET AL.

Decided: March 7, 2014

In 2007, Canadian Pacific Railway Company (CP), Soo Line Holding Company (Soo Holding), Dakota, Minnesota & Eastern Railroad Corporation (DM&E), and DM&E's wholly owned rail subsidiary, Iowa, Chicago & Eastern Railroad Corporation (IC&E), sought approval under 49 U.S.C. §§ 11321-26 for CP's acquisition of indirect control of DM&E and IC&E through ownership of DM&E/IC&E stock by Soo Holding.¹ The Board approved the acquisition, subject to conditions, in Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad, Docket No. FD 35081 (STB served Sept. 30, 2008).

On August 8, 2013, the State of South Dakota, acting by and through its Department of Transportation (State), filed a petition requesting that the Board enforce three investment representations allegedly made by CP as part of the acquisition proceeding. Specifically, the State claims that: (1) CP represented that it would invest \$300 million in the first three post-acquisition years; (2) CP, in clarification, represented that it would invest \$300 million in addition to investment dollars previously budgeted by DME² in the first few years following its acquisition of DME; and (3) the Federal Railroad Administration (FRA) informed the Board that, as part of the Safety Integration Plan (SIP) process for the acquisition, CP had represented that it would expend \$300 million in the first four post-acquisition years to upgrade all of DME's track to FRA Class 3 standards.

In a decision served on December 20, 2013, the Board permitted the State to engage in discovery. The Board noted that, through discovery, the State could test the foundation of the assertions made by CP and obtain additional documentation to fully present its case. The Board established a procedural schedule whereby the discovery period would end February 18, 2014, the State's supplement to its petition would be due by March 20, 2014, and CP's reply would be due by April 21, 2014. In its decision, the Board provided that CP and the State could agree to a different schedule.

¹ Unless otherwise noted, references to CP include affiliated corporate entities, including DM&E and IC&E.

² The State refers to DM&E and IC&E collectively as DME.

On February 14, 2014, the State filed a motion asking the Board to modify the procedural schedule by extending all dates by 45 days. The State explains that more time is necessary because discovery is taking more time than anticipated, because it filed a motion to compel discovery from CP on February 14, 2014, and because it is in the middle of its legislative session through mid-March. CP did not file a response to the State's motion to extend the procedural schedule.³

The State's request is reasonable and will be granted. Accordingly, discovery will end on April 4, 2014, the State's supplemental petition will be due on May 5, 2014, and CP's reply will be due on June 6, 2014.

It is ordered:

1. The State's motion to modify the procedural schedule is granted.
2. The State and CP are directed to abide by the procedural schedule set forth above.
3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ On March 6, 2014, CP filed a response to the State's motion to compel discovery. That motion will be addressed in a separate decision.